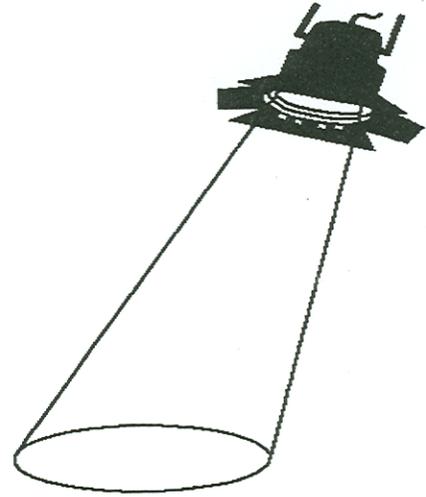




The University of Tennessee
County Technical Assistance
Service



SPOTLIGHT on CURRENT ISSUES

Executive Director's Memo
July 1, 2004

NEW ACTS AFFECTING COUNTY REGISTERS

PUBLIC CHAPTER 497 - Senate Bill 2712 (Norris) House Bill 3147 (Russell Johnson)

Amends T.C.A. § 66-24-101(a) to authorize county registers to record affidavits of scrivener's error (preparer's mistake) and other affidavits in furtherance of identification and title to land. Effective April 12, 2004.

PUBLIC CHAPTER 576 - Senate Bill 2380 (Haynes) House Bill 2547 (Fowlkes)

Amends T.C.A. § 66-22-101 to clarify that documents recorded with the county register must be executed by the maker's original signature, unless otherwise provided by law (UCC records for example). Also clarifies that the register may refuse documents not executed and authenticated according to this statute (acknowledged or witnessed by two subscribing persons). Amends T.C.A. § 66-24-101 to allow the register to refuse to register any writing eligible for registration according to Title 66 (dealing with property interests) if the writing is wholly or substantially written in any language other than English unless an affidavit is attached containing a complete translation of the original writing into English. The translation affidavit is to be attached and recorded with the original document. Removes provisions in Title 13 that made it a misdemeanor offense for the register to record plats that require planning commission approval without such approval being endorsed on the plat. Otherwise, nothing changed regarding the recording of plats. Effective July 1, 2004.

PUBLIC CHAPTER 896 - Senate Bill 2711 (Norris) House Bill 3146 (Russell Johnson)

Requires registers of deeds to adopt a policy regarding the procedure to follow if the register receives instruments for recording accompanied by fees in excess of the required amount. The policy must include at least one of the following, but may include combinations or all of the following:

- (1) Establishing a credit or debit account or a copy account for individual customers;
- (2) Contacting the person or entity tendering the instrument for specific instructions;
- (3) Allowing the register's office to retain reasonable overage amounts as fees of the office;
- (4) Registering every eligible instrument and providing a refund of the excess monies, less a reasonable amount of the excess payments retained as fees of the office. Effective June 8, 2004.

Act in Limbo:

PUBLIC CHAPTER 801 - Senate Bill 2180 (Fowler) House Bill 2544 (Fowlkes)

As engrossed and signed by the Governor, this act amends T.C.A. § 66-24-101 to allow registers of deeds to record copies of documents otherwise eligible for registration that are created or retained as an electronic record according to law if such copy is certified by a licensed attorney or the custodian of the record that such copy is a true and accurate copy of the original and the signature of such attorney or custodian is notarized. The register may require that the copy be in paper form. This act became effective June 3, 2004 according to its terms; however there is a cloud over this act as it appears that the Senate and House may have passed the bill with two amendments in reverse order. Proponents of this bill thought that an amendment dealing with recording writings evidencing environmental hazards or conditions (such as notice that property that had been used as a meth lab) offered by the Commissioner of the Tennessee Department of Environment and Conservation (TDEC), the federal Environmental Protection Agency (EPA) or by someone pursuant to a court order based upon an environmental audit by a registered engineering firm was also adopted, but this amendment was not engrossed (included) as part of the final bill. The amendment that was not included in the final bill would have allowed a party to a mortgage or deed of trust, such as a secured party, to record a formal deed of release or modification or cancellation of a notice of environmental hazard or condition that no longer exists or has been reduced as certified by a registered engineering firm, TDEC or the EPA. This confusing situation means that the validity of this act as signed (dealing with copies of an electronic record) is subject to legal challenge. At this time registers may record such copies if properly certified as noted above, but the legal effect of such recordings may be subject to challenge. It is also possible that the Attorney General or the courts could determine that the bill did pass, but with the other amendment, allowing a newly engrossed bill to be presented to the Governor for signing. CTAS will inform the registers as more information becomes available about the status of this act.

Act of Interest regarding Meth Labs:

PUBLIC CHAPTER 855 - Senate Bill 2979 (Burks) House Bill 2385 (Curtiss)

Many registers during the past year have been asked to record letters from law enforcement agencies intended to provide notification of the presence of potentially hazardous substances on certain property due to the discovery of illegal manufacture of methamphetamines on such identified property. These letters are not eligible for recording with the official land records and have caused much confusion. This new Public Chapter 855 DOES NOT authorize the recording of such letters, but it does provide a procedure for law enforcement agencies to quarantine such property and post signs on the property and for the direct notification of all parties having any right, title or interest in the quarantined property. Also, the act allows any person having an interest in the property to file a petition in the general sessions, criminal, circuit or chancery court of the county in which the property is located for the lifting of any such quarantine. If the court grants the petition, the quarantine will be lifted; if not granted, the quarantine will remain in effect. Although not a part of this act, other statutes will allow a register to record a certified copy of such a court order, but not the petition to lift the quarantine.

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